SUPREME COURT OF THE UNITED STATES.

No. 15.

MATHEWSON

vs.

WETMORE'S ADMINISTRATOR.

Report of masters, &c.

To the Hon. the Supreme Court of the United States, at its December term, 1845.

The undersigned, masters in chancery, in the case — Henry Mathewson, appellant, and John H. Clarke, administrator of the estate of Willard W. Wetmore, pending in said court, and to whom was referred their former report in the same cause, for the correction of any errors which might appear therein, respectfully report:

That, having met and heard the parties, they are of opinion that they erred in their former report in not making to the said Henry Mathewson a sufficient allowance for his commissions, and for his one-tenth of the profits and earnings to which he is entitled by the sixth clause of the contract, marked A, annexed to the original bill in the said cause.

And they herewith submit an additional account, in which said errors are corrected. The appellant filed with the masters the several statements, herewith returned, marked No. 1 to No. 7, inclusive, and claimed other allowances thereon. But the masters have made no change in their former accounts, other than as above mentioned.

In justice to the late Edward Carrington, they further report, that the above errors are not chargeable to him, as in his statements of the account, submitted to the masters, he credited the appellant with his commissions and his one-tenth of the profits.

J. & G. S. Gideon, printers.

Dr. *Henry Mathewson in account with*

To balance of account, marked 10 A, annexed to the master's 1st report, on page 313 of the printed documents - - - - - -	$29,300 60
" balance of the several items of the supplemental account, annexed to the second report of masters, on page 386 of printed documents - - -	960 18
" Amount of the debits in the account marked 11 A, annexed to masters' 1st report, excepting the 1st item on pages 313 and 314 of the printed documents - - - - - -	12,057 65
	42,318 43

In order to ascertain the commissions and profits to which Mr. Math
sions credited to him in the former accounts reported by the masters, as
would then have had in his hands a larger sum by their amount. These
of property returned and received by E. Carrington & Co., which was
amount of property safely returned, upon which Capt. Mathewson is
this from the 147,339 49, the balance shews the profits, of which Capt.

To balance brought down - - - -	39,648 44
	39,648 44

the other owners of the ship Mercury. Cr.

By amount allowed in the account annexed to masters' 3d report, on page 509 of printed documents	185 26
" wages, commissions, and interest, allowed in account marked 11 A, annexed to 1st report, on page 314 of the printed documents	2,484 73
" balance remaining in the hands of Henry Mathewson, carried to new account	39,648 44
	42,318 43

ewson is entitled, to the above balance should be added the commisthey should not have been deducted until his arrival home, and he allowances were 6,380 01. And there should also be added the amount $101,311 04. Thus making the sum of $147,339 49. The net entitled to his commission of 5 per cent., being 7,366 07, and deducting M. is entitled to $\frac{1}{10}$th.

By commissions, at 5 per cent., on 147,339 49, amount of property returned	7,366 97	
" deducting amount allowed for commissions in former account	6,380 01	
		1,986 96
" $\frac{1}{10}$ of 139,972 52, net amount of property safely returned		13,997 25
" balance due from Capt. Mathewson to the other owners of the Mercury		23,664 23
		39,648 44

Of this balance the original plaintiff is entitled to $\frac{1}{8}$th	$2,958 03
Interest from July 1, 1827, to Jan. 2, 1846, 18 years 6 months	3,283 41
Due plaintiff January 1, 1846	$6,241 44

CHARLES F. TILLINGHAST,
JOHN H. ORMSBEE,
RICHARD K. RANDOLPH.

Supreme Court of the United States, December term, 1844.

HENRY MATHEWSON, app't.
vs.
JOHN H. CLARK, adm'r of Willard W. Wetmore. } No. 45.

Mr. Whipple having filed and read in open court the following agreement of counsel, in writing, to wit: "It is agreed that said cause be continued to the next term, and that the report of the masters be referred back to them, with authority to correct all errors, if any there be, and to amend the same as they may see cause, having first heard both parties; and to the amended report either party may file exceptions, and such report and exceptions shall be made part of the record; and the cause shall then be heard and decided in this court in the same manner as if such report and exceptions had come up as part of the original record.

JOHN H. CLARKE,
By his solicitor John Whipple.
CHAS. F. CARPENTER,
Solicitor to Henry Mathewson."

It is thereupon now here ordered by this court, that this cause be, and the same is hereby, continued to the next term of this court.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify, that the foregoing is a true copy of the order of said Supreme Court, made in said cause at December term, eighteen hundred and forty-four. Extracted from the minutes of said Supreme Court.

In testimony whereof, I hereunto set my hand and affix the seal of said Supreme Court, at the city of Washington, this ninth day of September, in the year of our Lord eighteen hundred and forty-five.

WM. THOS. CARROLL,
Clerk of the Supreme Court U. States.

Statement of errors, No. 1.

The masters have not in their account credited to Mathewson his "one-tenth *tenth* of all the profits and earnings made in the voyage or voyages, freights, or otherwise," to which he is entitled by contract. See contract in printed copy, p. 19, Art. 6.

The profits and earnings are as follows:

Page 170	Net amt. sales, per Alsop, Wetmore & Co. - - - - -	101,587 62½
" 169	Alsop, Wetmore & Co.'s net amt. of sales at retail - - - -	2,893 25
" 170	Net sales of 104 boxes fire crackers, (1829)	449 37½
" 170	Do 5 cases black silk ribbon -	784 62½
" 312	Net sales at Valparaiso, Oct., 1826 -	14,397 98

Statement No. 1—Continued.

Page 312	Freight list of Superior from Canton to S. America, 1826 - - -	1,117 68
" 312	Net sales 9 pieces of black satin at Valparaiso, 1826 - - - -	213 75
" 312	Net sales of Alsop, Wetmore & Co., of sundries left with them from Mercury's cargo, from China, 1825 - -	1,804 94
" 312	Net sales 2 boxes china, and 31 counterfeit dols. - - - -	30 37
" 304	Remitted Thomas Dickerson & Co., from Lima, Dec. 30, 1824, R. Proctor's bill, No. 197, on Thos. Kennedy -	4,322 50
" 313	Net sales sundries from Mercury's cargo at Guiaquille, 1825, by Bartlet & Swet	777 00
" 312	Received of Alsop, Wetmore & Co.,	
" 312	1827, on account of the loss in weight of plata pina purchased of them in 1825	363 37½
" 312	Cash received of Alsop, Wetmore & Co. for charges made on goods from brig Monopa, on shore, when the goods were sold on board - - -	117 37½
" 306	The amount of credit on several errors in 1827 - - - - -	398 65
	Total amt. profits and earnings - -	129,258 50

Of this amount Mathewson claims $\frac{1}{10}$.

Note.—The pages refer to printed copy.

Statement No. 2.

An account of monies, proceeds of joint adventure of E. Carrington & Co., C. Butler and H. Mathewson, in addition to the 101,587 62, admitted by E. Carrington & Co. and C. Butler to have been received, and on which Mathewson is entitled to commissions.

From Alsop, Wetmore & Co., for sales made by them in 1829, as per their account rendered, page 170. See the items - - - - - -	4,127 25
Invoice of copper, shipped at Valparazo by Capt. Mathewson to E. Carrington & Co., and Cyrus Butler, Feb. 17, 1827, per ship Portia, page 165, also p. 311	6,040 25
Profits on sale of the same, sold by E. Carrington & Co., in New York - - - - -	* *

Statement No. 2.—Continued.

Cash remitted Thos. Dickerson & Co., Dec. 30, 1823, From Lima, page 304 - - - - Pay 369 24 ex.	4,322 50
	13,489 00

On the above sum "*safely returned*" to the United States, Mathewson is entitled to his commissions; also on all sums being net proceeds of the Mercury's voyage on joint adventure, they being safely returned to the United States, whether in the hands of Mathewson or of E. Carrington & Co. and C. Butler.

Mathewson distinctly claims his commissions and his $\frac{1}{10}$ part of all profits and earnings of said voyages, whether the same are in his own hands or in the hands of E. C. & Co. or C. Butler. Also on all sums for which he is made answerable.

Statement No. 3.

On page 305 the masters have made the following error: They have charged to the joint concern of E. Carrington & Carrington & Co., C. Butler, & H. Mathewson cash remitted by the Harriet, May 6th, 1823, $2,000 *dollars*, less expenses $42.87 - - - - - 1,958 12

This sum was remitted to Mrs. Mathewson by E. Lynch & Co., from Lima, in specie, and was part of Mathewson's private and individual profits upon flour, allowed by the masters to be his individual property. Carrington & Co. having received it, gave to Mrs. Mathewson a receipt for the same, which is on file. This sum ought to have been made an offset against any sum that should ultimately be found due from Mathewson, and not treated as a part of the joint funds.

If viewed as joint funds, it ought to be subjected to the 5 per ct. export duty paid upon it at Lima—the box which cost 3 dols., and transportation from Lima to Callao 2 dols., in addition to the freight from Callao of 42.87. (See Lynch & Co.'s account.)

Statement No. 4.

The masters charge to H. Mathewson, for sums of money paid to Mrs. Mathewson, by E. Carrington & Co. and C. Butler, on account of Mathewson's wages, and interest thereon, 3,132 60.

No proof was exhibited to the masters of the payment of this sum. Mrs. Mathewson received only seventeen hundred and fifty dollars.

Statement No. 5.

E. Carrington & Co. and C. Butler have charged, as the cost of the ship Mercury and repairs, before she sailed from Providence, 14,641 60, in which sum they have included the provisions and outfits for

the first voyage, in which Mathewson had no interest, and the masters have charged him with one-tenth part of this sum. See $\frac{1}{10}$ part charged to Mathewson, p. 213.

Statement No. 6.

The sum of 97 75, charged on page 313, was for the expenses of a lawsuit growing out of the transactions of the Mercury's first voyage, and accruing before Mathewson had any interest in the concern. It remained unpaid until after he became a partner, and he then paid it, and charged it to the joint concern, consisting of himself, as well as Carrington & Co. and C. Butler. Carrington & Co. and Butler ought to pay it. Mathewson is therefore entitled to be allowed $\frac{1}{10}$ part of said sum, with interest.

Statement No. 7.

On page 314, is this item of debt:

"For $\frac{1}{10}$ of disbursements made by E. Carrington & Co.," 134 36

Mathewson cannot find any such disbursements, and believes the item to be a mistake.

Filed 3d February, 1836.